**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY DIMEO, III,	:	
	:	
Plaintiff,	:	
	:	**No. 06-1544**
v.	:	
	:	
TUCKER MAX	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _______________, 2006, upon consideration of Plaintiff's Petition for Remand to the Court of Common Pleas of Philadelphia County and Stay Defendant's Pending Motion to Dismiss, and defendant's response thereto, it is hereby ORDERED that the Petition is DENIED. It is further ORDERED that plaintiff's counsel shall, within ten (10) days of receipt of an invoice from defendant's counsel, reimburse defendant for all attorney's fees, costs and expenses incurred in connection with his response to the Petition.

BY THE COURT:

____
The Honorable Stewart Dalzell

Dockets.Justia.com

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY DIMEO, III,	:	
	:	
Plaintiff,	:	
	:	**No. 06-1544**
v.	:	
	:	
TUCKER MAX	:	
	:	
Defendant.	:	

DEFENDANT'S OPPOSITION TO PLAINTIFF'S PETITION FOR REMAND TO THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY AND STAY DEFENDANT'S PENDING MOTION TO DISMISS

Pursuant to the Court's May 3, 2006 Order, defendant Tucker Max, by and through his undersigned counsel Montgomery, McCracken, Walker & Rhoads, LLP, respectfully submits this opposition to plaintiff's petition to remand this matter to the Court of Common Pleas of Philadelphia County (the "Petition").

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff seeks to have this matter remanded to state court because defendant did not file timely his Notice of Removal. *See* Petition at ¶¶ 4, 6. Plaintiff's argument is based entirely on the fact that a reporter contacted defendant and informed him that he had been sued by plaintiff. *Id.* at ¶ 2. That argument directly contradicts cases decided by the United States Supreme Court, United States Court of Appeals for the Third Circuit and United States District Court for the Eastern District of Pennsylvania.

In fact, immediately upon receiving the Petition, defendant's counsel advised plaintiff's counsel of the well-established case law that defeats plaintiff's argument for remand. *See* Exhibit 1, April 27, 2006 letter from Michael K. Twersky to Matthew B. Weisberg. In that letter, defendant's counsel identified the relevant case law and requested that plaintiff withdraw his Petition. *Id.* Plaintiff has refused to do so, even though there is absolutely no basis to support his position. Because defendant has been forced to respond to the Petition, he requests that the Court Order plaintiff and his counsel to reimburse all attorney's fees, costs and expenses incurred in connection with responding to the Petition.

II. STATEMENT OF RELEVANT FACTS

On or about March 10, 2006, plaintiff filed a Civil Action Complaint in the Court of Common Pleas, Philadelphia County, Pennsylvania against defendant.[1] *See* Exhibit 2, Notice of Removal at ¶ 1. At no time prior to March 23, 2006 did plaintiff serve on defendant either the Complaint or Summons, and plaintiff does not state otherwise in his Petition.

On March 10, 2006, a local newspaper published an article about the filing of this lawsuit. *See* Petition at Exhibit A, March 10, 2006 *Metro* article, "DiMeo Sues Web site owner." The article reports that the newspaper contacted defendant by e-mail and informed him about the filing of the Complaint. *Id.* It is obvious from the comments attributed to defendant in the article that he had not yet seen, let alone been served with, the Complaint. *Id.* Indeed, in response to being told that he had been sued by plaintiff, defendant is reported to have said the following: "Please give [plaintiff] my address, so as to expedite delivery of a document I anticipate to be of the highest comedy." *Id.*

On March 22, 2006, after being retained as counsel by defendant, Michael Twersky contacted plaintiff's counsel, Matthew Weisberg, and agreed to accept service of the Complaint

[1] The Complaint alleges three causes of action based on statements "posted" on defendant's Internet website: defamation (Count I); violation of the Communication Act of 1943 (47 U.S.C. § 223(a)(1)(c)), as amended by Violence Against Woman and Department of Justice Reauthorization Act of 2005 (Count II); and punitive damages (Count III).

on defendant's behalf. Exhibit 2, Notice of Removal, at ¶ 2. On March 23, 2006, plaintiff's counsel forwarded the Complaint, by electronic mail, to Mr. Twersky. *Id.* at ¶ 3. On April 12, 2006, less than thirty days after receiving the Complaint, defendant filed his Notice of Removal. Thus, defendant's Notice of Removal was timely filed under 28 U.S.C. § 1446(b), as it was filed within thirty (30) days of *service* of the Complaint.

III. LEGAL ARGUMENT

A. Defendant's Notice of Removal was Filed Timely.

A defendant may remove a civil action filed in state court if the federal court in the district where the action is pending would have had original jurisdiction over the matter. 28 U.S.C. § 1441(a). Where a cause of action involves a federal question – that is, where it arises "under the Constitution, laws or treaties of the United States" – or involves citizens from different states and an amount in controversy in excess of $75,000, the District Court has original jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331 and 1332.[2] Both federal question and diversity are present in this case, so removal is permissible pursuant to 28 U.S.C. § 1441.

There is, however, only a narrow window of opportunity during which removal is timely. In relevant part, 28 U.S.C. § 1446 (b) provides that a defendant must file a notice of removal:

> within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(b).

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[2] The grounds for removal were based on both diversity of citizenship (28 U.S.C. § 1332) and federal question jurisdiction (28 U.S.C. § 1331). Exhibit 2, Notice of Removal, at ¶¶ 4-10. Plaintiff does not contest the substantive basis for removal.

The United States Supreme Court, in *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), addressed the issue of whether a defendant had to be properly *served* before the removal period begins to run: "The question presented is whether the named defendant must be officially summoned to appear in the action before the time to remove begins to run." *Id.* at 347.

The Supreme Court answered this question by holding that a defendant "is not obliged to engage in litigation unless notified of the action and brought under a court's authority by formal process." *Id.* at 347. Accordingly, the Court held that "a named defendant's time to remove is triggered by simultaneous service of summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of summons, but not by mere receipt of the complaint unattended by formal service." *Id.* at 347-48; *see also Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 220-23 (3d Cir. 2005); *Sprague v. American Bar Ass'n*, 166 F. Supp. 2d 206, 208 (E.D. Pa. 2001); *Steff v. Township of Salisbury*, No. 99-2931, 1999 U.S. Dist. LEXIS 14966 (E.D. Pa. Sept. 20, 1999).

There is no question that defendant was not served with the Complaint until March 23, 2006 *at the very earliest*. Plaintiff does not contest that fact. Instead, plaintiff states, without any supporting case law,[3] that defendant "publicly acknowledged receipt of *notice* of this lawsuit" on March 10, 2006, and that is sufficient to trigger removal. Petition at ¶ 2 (emphasis added). Mere knowledge that a lawsuit has been filed, however, is not the same as "service of summons and complaint." *Murphy Brothers, Inc.*, 526 U.S. at 347-48.

[3] The local rules for the United States District Court for the Eastern District of Pennsylvania require that all contested motions be "accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of the motion." Local Rule of Civil Procedure 7.1(c). The "Petition," however, contains no "brief" or any supporting memorandum of law.

Because defendant filed his Notice of Removal less than thirty days after being *served* with the Complaint, plaintiff's Petition should be denied.

B. Defendant is Entitled to Sanctions for Having to Respond to the Petition.

Immediately upon receiving plaintiff's Petition, counsel for defendant sent a letter to plaintiff's counsel advising him that the Petition was improper, that it had no basis in law or fact, and demanding that it be withdrawn within four days. Exhibit 1, April 27, 2006 letter from Michael K. Twersky to Matthew B. Weisberg. The letter quoted the Supreme Court's holding in *Murphy Brothers* and provided the citation so that plaintiff could verify it. *Id.*

In response to the letter, plaintiff's counsel agreed to "research [the issue] prior to our likely upcoming hearing in this matter with a view to withdrawing this motion at our hearing if your contentions prove correct." Exhibit 3, April 27, 2006 e-mail from Matthew B. Weisberg to Michael K. Twersky. The Petition was not withdrawn and defendant was forced to file this response.

Both the inherent powers of the Court and federal statute allow the imposition of sanctions against a party or his attorney where they have acted in bad faith. *See, e.g., In re Prudential Ins. Co. Sales Prac. Litig.*, 218 F. 3d 175 (3d Cir. 2002); 28 U.S.C. § 1927.[4]

The Third Circuit has described the circumstances under which sanctions may be awarded:

> Before a court can order the imposition of attorneys' fees . . . it must find willful bad conduct on the part of the offending attorney. Indications of

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[4] 28 U.S.C. § 1927, entitled "Counsel's liability for excessive costs," provides as follows:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

> this bad faith are findings that the claims advanced were meritless, that counsel knew or should have known this, and that the motive for filing . . . was an improper purpose such as harassment.

In re Prudential, 278 F.3d at 188 (internal citations omitted).

All of the elements identified by the Third Circuit are present here. In this case, plaintiff's counsel was informed of the well-established, precedential case law against the argument that the removal time-period is triggered merely by "notice" of the filing of a complaint. *See* Exhibit 1, April 27, 2006 letter. He agreed to research the issue and withdraw the Petition if plaintiff's position was not supportable. *See* Exhibit 3, April 27, 2006 e-mail. Thus, plaintiff's counsel "knew or should have known" that his claims were meritless. *In re Prudential,* 278 F.3d at 188. Rather than voluntarily withdrawing the Petition, however, he forced defendant to respond to it and the Court to rule on it. Such conduct demonstrates that plaintiff's refusal to withdraw the Petition was not legitimate but rather was for "an improper purpose such as harassment." *Id.*

Because plaintiff's counsel was on notice that his position was without merit and he refused to withdraw his Petition, defendant requests reimbursement of all attorney's fees, costs and expenses that have been incurred in responding to the Petition.

IV. CONCLUSION

For the reasons set forth herein, defendant respectfully urges the Court to deny plaintiff's Petition to Remand and to Order plaintiff and his counsel to reimburse defendant for all fees, costs and expenses incurred in connection with responding to the Petition.

Respectfully submitted,

Dated: May 8, 2006

MT 829

Michael K. Twersky (PA I.D. 80568)
John G. Papianou (PA I.D. 88149)
Katherine Skubecz (PA I.D. 91545)
Montgomery, McCracken, Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109
(215) 772-7313 (tel)
(215) 731-3663 (fax)

Attorneys for Defendant
Tucker Max

EXHIBIT 1

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP
ATTORNEYS AT LAW

MICHAEL K. TWERSKY
ADMITTED IN PENNSYLVANIA & NEW JERSEY

DIRECT DIAL
215-772-7313

mtwersky@mmwr.com

123 SOUTH BROAD STREET
AVENUE OF THE ARTS
PHILADELPHIA, PA 19109
215-772-1500
FAX 215-772-7620

LIBERTYVIEW
457 HADDONFIELD ROAD, SUITE 600
CHERRY HILL, NJ 08002
856-488-7700
FAX 856-488-7720

300 DELAWARE AVENUE, SUITE 750
WILMINGTON, DE 19801
302-504-7800
FAX 302-504-7820

1235 WESTLAKES DRIVE, SUITE 200
BERWYN, PA 19312
610-889-2210
FAX 610-889-2220

April 27, 2006

BY FACSIMILE
AND REGULAR MAIL
Matthew B. Weisberg, Esquire
Prochniak Poet & Weisberg, P.C.
7 South Morton Avenue
Morton, PA 19070

Re: DiMeo v. Max, Civil Action No. 06-1544
United States District Court for the Eastern District of Pennsylvania

Dear Mr. Weisberg:

Today we received plaintiff's "Petition for Remand" filed in the above-matter. This letter concerns the impropriety of that filing and our demand that plaintiff immediately withdraw it. Should plaintiff refuse to withdraw the "Petition," defendant shall seek all fees and costs incurred in responding to it, as provided under the Federal Rules of Civil Procedure and United States statute.

First, the copy of the "Petition" we received is unsigned. As you are aware, Federal Rule of Civil Procedure 11(a) requires all pleadings to be "signed by at least one attorney of record in the attorney's individual name." Any unsigned pleading "shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." *Id.*

Second, the local rules for the United States District Court for the Eastern District of Pennsylvania require that all contested motions be "accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of the motion." Local Rule of Civil Procedure 7.1(c). The "Petition," which will certainly be contested, contains no "brief" or any supporting memorandum of law.

Your failure to file a "brief containing … legal contentions and authorities" leads directly to the third and final reason why plaintiff's "Petition" is improper. Had plaintiff filed such brief, and researched the relevant case law as is required pursuant to Federal Rule of Civil Procedure 11, he would have realized that the "Petition" is contrary to well-established law. Specifically, in *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999), the United States Supreme Court held that a defendant "is not obliged to engage in litigation unless notified of the action and brought under a court's authority by formal process." Accordingly, the Court held that "a named defendant's **time to remove is triggered by simultaneous service of summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of summons, but not by mere receipt of the complaint unattended by formal service.**" *Id.* at 347-48 (emphasis added). That holding is consistent with the Third Circuit's holding in *Foster v. Mutual Fire Marine & Inland Ins. Co.*, 986 F.2d 48 (3d Cir. 1993), as well as numerous decisions by the United States District Court for the Eastern District of Pennsylvania.

As you know, defendant never received "the complaint, through service or otherwise, after and apart from service of summons." In fact, until March 23, 2006 – when this law firm accepted service of the complaint on behalf of defendant – **nothing** was served on defendant. Indeed, you must know this since you represent plaintiff, purportedly signed the Complaint, and were responsible for serving it on defendant.

Nevertheless, the "Petition" argues that the removal clock is triggered whenever, and however, a defendant first learns about the filing of a complaint, whether or not defendant is served with the complaint or has even seen the complaint. There is no case law to support that contention; in fact, the law is clear that such is **not** the case.

Unfortunately, the failure to follow legal precedent has been a recurring theme in this case in regard to plaintiff's pleadings. As explained in my March 28, 2006 letter, to which you never responded, as well as defendant's motion to dismiss, plaintiff's complaint fails to state any legally viable cause of action. In fact, plaintiff's claims directly contradict the law in this circuit, as well as virtually every other circuit. Now, plaintiff has filed a "Petition to Remand" that is equally (if not more) deficient than the Complaint.

Unless plaintiff withdraws the "Petition for Remand" by Monday, May 1, 2006, defendant will be forced to prepare a response to it. If that occurs, defendant will seek its fees and costs, as well as other sanctions provided by Federal Rule of Civil Procedure 11 and 28 U.S.C. § 1927.

Sincerely,

Michael K. Twersky

MKT:saf

cc: Tucker Max

EXHIBIT 2

SD

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY DIMEO, III,	:	
	:	
Plaintiff,	:	No. 06 1544
	:	
v.	:	
	:	
TUCKER MAX	:	A TRUE COPY CERTIFIED TO FROM THE RECORD
	:	DATE: APR 1 2 2006
Defendant.	:	ATTEST: Steve Torres
		DEPUTY CLERK, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

NOTICE OF REMOVAL

Defendant Tucker Max hereby gives Notice of Removal of this action from the Court of Common Pleas, Philadelphia County, Pennsylvania, in which it is now pending, to the United States District Court for the Eastern District of Pennsylvania.

The grounds for removal are as follows:

1. On or about March 10, 2006 plaintiff Anthony DiMeo, III filed a Civil Action Complaint in the Court of Common Pleas, Philadelphia County, Pennsylvania naming Mr. Max as the sole defendant. *See* Exhibit A, Complaint.

2. On March 22, 2006, Mr. Max's counsel agreed to accept service of the Complaint on his behalf.

3. On March 23, 2006, plaintiff's counsel forwarded the Complaint, by electronic mail, to Mr. Max's counsel. Thus, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b), as it is filed within thirty (30) days of service of the Complaint.

4. In his Complaint, plaintiff avers that he is a resident citizen of Philadelphia, Pennsylvania. Exhibit A, Complaint at ¶1.

5. Mr. Max is a resident citizen of New York County, New York. *Id.* at ¶2.

6. Therefore, plaintiff and defendant are citizens of different states.

7. Plaintiff's Complaint contains three separate Counts, the second of which is for alleged violations of the "Communications Act of 1943 (47 U.S.C. § 223(a)(1)(c))." *Id.* at ¶¶13-14.

8. Plaintiff further alleges that the amount in controversy is "in excess of $75,000," and he is seeking $1 million in punitive damages. *Id.* at ¶¶12, 14 and 18 ("WHEREFORE" clauses).

9. Because the parties are of completely diverse citizenship, and the amount in controversy is in excess of $75,000, this Court has original jurisdiction of this action under the provisions of 28 U.S.C. § 1332(a), and the action is removable pursuant to 28 U.S.C. § 1441(a).

10. In addition, because plaintiff has alleged violations of the Communications Act of 1943, as amended, 47 U.S.C. § 223(a)(1)(c)), removal of this case also is proper pursuant to 28 U.S.C. § 1331, and this court should exercise supplemental jurisdiction over plaintiffs' state law tort claims, as they form part of the same case or controversy as the federal claim. *See* 28 U.S.C. § 1367.

WHEREFORE, defendant Tucker Max hereby gives notice of removal of this action from the Court of Common Pleas, Philadelphia County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

Dated: April 12, 2006

Michael K. Twersky, (PA Atty. I.D. 80568)
Montgomery, McCracken, Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109
215-772-1500 (Telephone)
215-731-3663 (Facsimile)

Attorney for Defendant
Tucker Max

EXHIBIT A

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

[redacted]

001576

PLAINTIFF'S NAME: Anthony DiMeo

PLAINTIFF'S ADDRESS: 226 West Rittenhouse square Philadelphia, PA 19103

DEFENDANT'S NAME: Tucker Max

DEFENDANT'S ADDRESS: 143 Madison Ave New York, NY 10016

PLAINTIFF'S NAME:

PLAINTIFF'S ADDRESS:

DEFENDANT'S NAME:

DEFENDANT'S ADDRESS:

PLAINTIFF'S NAME:

PLAINTIFF'S ADDRESS:

DEFENDANT'S NAME:

DEFENDANT'S ADDRESS:

TOTAL NUMBER OF PLAINTIFFS: 1

TOTAL NO. OF DEFENDANTS: 1

COMMENCEMENT OF ACTION
- [x] Complaint
- [ ] Writ of Summons
- [ ] Petition Action
- [ ] Transfer From Other Jurisdictions
- [ ] Notice of Appeal

AMOUNT IN CONTROVERSY
- [ ] $50,000.00 or less
- [x] More than $50,000.00

COURT PROGRAMS
- [ ] Arbitration
- [x] Jury
- [ ] Non-Jury
- [ ] Other: ______
- [ ] Mass Tort
- [ ] Savings Action
- [ ] Petition
- [ ] Commerce
- [ ] Minor Court Appeal
- [ ] Statutory Appeals
- [ ] Settlement
- [ ] Minors
- [ ] W/D/Survival

CASE TYPE AND CODE (SEE INSTRUCTIONS): Civil Action Complaint - 2L - Libel & Slander

STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS):

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER):

IS CASE SUBJECT TO COORDINATION ORDER?

Yes	No
☐	☒
☐	☐
☐	☐

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant:

Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY: Matthew Weisberg

ADDRESS (SEE INSTRUCTIONS):
Prochniak Poet & Weisberg, P.C.
7 S. Morton Ave.
Morton, PA 19070

PHONE NUMBER: 610-690-0801

FAX NUMBER: 610-690-7401

SUPREME COURT IDENTIFICATION NO.: 85570

E-MAIL ADDRESS: mweisberg@ppwlaw.com

SIGNATURE: [signature]

DATE: 2/21/06

FROM PROCHNIAK, POET & WEISBERG 6106907401 (SUN)MAY 21 2006 11:52/ST. 11:51/No.7600000601 P 2

THIS IS A MAJOR JURY MATTER.
ASSESSMENT OF DAMAGES REQUIRED.

ATTEST
MAR 1 0 2006
LAURA PAONE

PROCHNIAK POET & WEISBERG, P.C.
MATTHEW B. WEISBERG, ESQUIRE
IDENTIFICATION NO.: 85770
7 S. MORTON AVE.
MORTON, PA 19070
(610) 690-0801

ATTORNEY FOR PLAINTIFF

JURY FEE PAID

ANTHONY DIMEO, III 226 WEST RITTENHOUSE SQUARE PHILADELPHIA, PA 19103 v. TUCKER MAX 143 Madison Avenue New York, NY 10016	COURT OF COMMON PLEAS PHILADELPHIA COUNTY TERM, 2006 MARCH 2006 NO. 001576

JURY FEE PAID

CIVIL ACTION COMPLAINT
2L - LIBEL

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Philadelphia Bar Association
Lawyer Referral
and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perer dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

Asociacion de Licenciados
de Filadelfia
Servicio de Referencia e
Informacion Legal
One Reading Center
Filadelfia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

THIS IS A MAJOR JURY MATTER.
ASSESSMENT OF DAMAGES REQUIRED.

PROCHNIAK POET & WEISBERG, P.C.
MATTHEW B. WEISBERG, ESQUIRE
IDENTIFICATION NO.: 85770
7 S. MORTON AVE.
MORTON, PA 19070
(610) 690-0801

ATTORNEY FOR PLAINTIFF

ANTHONY DIMEO, III
226 WEST RITTENHOUSE SQUARE
PHILADELPHIA, PA 19103

v.

TUCKER MAX
143 Madison Avenue
New York, NY 10016

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM, 2006
NO.

CIVIL ACTION COMPLAINT
2L - LIBEL

1. Plaintiff, Anthony DiMeo, III (hereinafter "DiMeo"), is an individual currently residing at the above captioned address.

2. Defendant, Tucker Max ("Max"), is an individual maintaining a principal place of business at the above captioned address.

3. Defendant does business, advertises and publishes a web site directed towards the City and County of Philadelphia and/or residents therein, including Defendant, which is hereinafter more fully described.

4. At all times material, Defendant maintained, hosted and published a web-site: www.tuckermax.com ("Site"), more fully described at length herein.

5. Defendant through his Site publishes defamatory statements aimed at Plaintiff, including, but not limited to:

a. " Maybe you should find your validation elsewhere…preferably at the end of a magnum"

b. "I just wanted to let you know that I think that you are the biggest piece of shit I have ever heard of and I hope that you die soon";

c. " Now I know why Arlen Specter got invited to all those Renamity Http://www.renamity.com/galary/birthdaybash/escf0009 parties! Could it be…bribery of your local politician";

d. "He's got a neat, nice little page there from which we can harass him";

e. "I can't believe no one has killed him yet";

f. "You threw an absolutely disastrous party on New Year's Eve precipitated by false advertising and possible fraud"; and

g. Such other and further libelous statements published on the Site and will likely be published on said site, which are herewith incorporated by reference as if fully set forth at length herein as if originally pleaded herein, as may be discovered throughout ongoing discovery and/or at trial.

6. At all times material, Defendant negligently, carelessly, recklessly and/or intentionally published said libelous statements with a view towards:

a. Reducing and/or impeding Plaintiff's commercial success and profitability;

b. Harassing, threatening, and annoying Plaintiff;

c. Personally and financially injuring Plaintiff;

d. Inciting violence and criminal misconduct toward Plaintiff and Plaintiff's companies, firms, and businesses: DiMeo Farms, LLC., Renamity, Inc., and Wealth Management; and

e. Otherwise defaming Plaintiff.

7. At all times material, Plaintiff is a private person and not a public figure and is entitled to heightened protection from defamatory publications.

COUNT I-DEFAMATION

8. Paragraphs 1-7 above are incorporated by reference as if more fully set forth at length herein.

9. Defendant's Site constitutes a defamatory publication, actionable per se as libel per se and was and/or is published with express and actual malice with an intent to defame and/or libel Plaintiff.

10. The defamatory conduct of Defendant includes, but is not limited to:

a) Accusing Plaintiff of criminal conduct without investigating the truth or veracity thereof and with express malice and reckless disregard for the truth;

b) The continuing failure of Defendant to substantiate the published baseless allegations;

c) Knowing or should have known of the lack of veracity of the Site's aforementioned defamatory substance;

d) Publishing said defamatory accusations;

e) Misappropriating Plaintiff's personal likeness and web sites of his public relations firm, Renamity Public Relations & Special Events (http://www.renamity.com), his personal and Wealth Management web site (http://www.anthonyDiMeo.com), and the web site which details the legacy of his family farming operation, DiMeo Farms, LLC (http://www.DiMeofarms.com), or portions thereof with a view towards profit and/or commercial gain;

f) Casting Plaintiff in a false light;

g) Invading Plaintiff's privacy and/or inappropriately exposing Plaintiff's private life to public ridicule and scorn:

h) Inciting violence against Plaintiff;

i) Publishing with an intent to threaten, harass, humiliate and annoy Plaintiff;

j) Such other and further defamatory conduct as may be revealed throughout continuing discovery and/or at trial.

11. Defendant's misconduct as set forth at length above has severely injured Plaintiff in that it has tended to:

a) Blacken Plaintiff's reputation;

b) Expose Plaintiff to public hatred, contempt and ridicule;

c) Falsely ascribe to Plaintiff want of integrity and other characteristics incompatible with a faithful performance of his daily life, duties and occupation;

d) Injure him regarding his business and/or profession;

e) Cause Plaintiff severe emotional distress;

d) Cause Plaintiff severe financial hardship; and

f) Such other injuries as may be revealed throughout continuing discovery and/or at trial, all of which may be permanent and ongoing.

12. Plaintiff is entitled to recover from Defendant such damages as will compensate him for his aforementioned injuries, as well as punitive damages which will deter like future misconduct from Defendant.

WHEREFORE, Plaintiff, Anthony DiMeo, III, demands judgment in his favor and against Defendant, Tucker Max, in an amount in excess of $75,000.00, together with attorneys fees, interest, costs and such other and further relief as this Honorable Court deems necessary and just, including punitive damages.

COUNT II- VIOLATION OF THE COMMUNICATIONS ACT, AS AMENDED

13. Plaintiff incorporates by reference 1-12 as if the same were fully set forth at length herein.

14. At all times material, Defendant was and/or is in violation of the Communications Act of 1943 ("Communications Act") (47 U.S.C. 223(a)(1)(c)), as amended by the

Violence against Woman and Department of Justice Reauthorization Act of 2005 ("The Act") (H.R. 3402-288§113), through the hosting, maintenance and publication of the aforesaid site, by transmitting via the internet the aforesaid defamatory publications without disclosing the identity of the maker thereof and/or for commercial purposes, with intent to annoy, abuse, threaten, or harass Plaintiff, and as such, Defendant is civilly liable to Plaintiff for same.

WHEREFORE, Plaintiff, Anthony DiMeo, III, demands judgment in his favor and against Defendant, Tucker Max, in an amount in excess of $75,000.00, together with attorneys fees, interest, costs and such other and further relief as this Honorable Court deems necessary and just, including punitive damages.

COUNT III - PUNITIVE DAMAGES

15. Plaintiff incorporates by reference paragraphs 1-14 as if the same were fully set forth at length herein.

16. The actions and conduct set forth above of Defendant was extreme and outrageous and was done intentionally and/or recklessly and/or maliciously by said Defendant against Plaintiff.

17. Said actions and conduct was done with bad motive and in wanton, willful and reckless disregard for the rights of Plaintiff.

18. Plaintiff herewith avers that Punitive Damages are warranted by the aforesaid conduct and actions and as a result of the aforementioned conduct, which is herewith incorporated by reference.

WHEREFORE, Plaintiff, Anthony DiMeo, III, demands judgment in his favor and against Defendant, Tucker Max, in an amount in excess of $1 Million ($1,000,000.00), together with attorneys fees, interest, costs and such other and further relief as this Honorable Court deems necessary and just.

PROCHNIAK POET & WEISBERG, P.C.

____

MATTHEW B. WEISBERG, ESQUIRE
Attorney for Plaintiff

Date: 3/8/06

VERIFICATION

The facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. The language of this pleading is that of counsel and not of signer. This verification is made subject to the penalties of 18 PA C.S.A. §4904 relating to unsworn falsification to authorities.

Matthew B. Weisberg /S/
Signature

Matthew B. Weisberg
Print name

Counsel
TITLE

Date: 2-13-06

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April 2006, a true copy of the foregoing Notice of Removal was sent by facsimile and First Class U.S. Mail, postage prepaid, to the following:

Matthew B. Weisberg, Esquire
Prochniak Poet & Weisberg, P.C.
7 S. Morton Ave.
Morton, PA 19070
(610) 690-0801 (tel)
(610) 690-7401 (fax)

John G. Papianou

EXHIBIT 3

Twersky, Michael

From: Matthew B. Weisberg [mweisberg@ppwlaw.com]
Sent: Thursday, April 27, 2006 5:25 PM
To: Twersky, Michael
Subject: Dimeo v. Max: Petition to Remand

Thank you for your informative correspondence of April 27, 2006.

As for my signature, this document was electronically filed and signed (you received a copy). Please advise if this does not cure my deficiency in this regard.

As for the balance, I will research same prior to our likely upcoming hearing in this matter with a view to withdrawing this motion at our hearing if your contentions prove correct.

Can I assume then that if I do withdraw this motion at our hearing that you will refrain from seeking sanctions?

Thank you again for the courtesies of your correspondences.

Matthew B. Weisberg, Esq.

Prochniak, Poet & Weisberg, P.C.
7 S. Morton Ave.
Morton, PA 19070
W: 610-690-0801 x223
C: 215-370-7500
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(3) Home Inspector, Realtor and Mortgage Broker Negligence;
(4) Real Estate and Auto Fraud;
(5) Insurance Bad Faith; and
(6) Lender Liability/Predatory Lending.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May 2006, a true copy of the foregoing Defendant's Opposition to Plaintiff's Petition for Remand to the Court of Common Pleas of Philadelphia County and Stay Defendant's Pending Motion to Dismiss was sent by First Class U.S. Mail, postage prepaid, to the following:

Matthew B. Weisberg, Esquire
Prochniak Poet & Weisberg, P.C.
7 S. Morton Ave.
Morton, PA 19070
(610) 690-0801 (tel)
(610) 690-7401 (fax)

MT 829

Michael K. Twersky